



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R01-RCRA-2022-0864; FRL 10508-02-R1]

Vermont: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Vermont has applied to the Environmental Protection Agency (EPA) for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. The EPA has reviewed Vermont’s application and has determined that these revisions satisfy all requirements needed to qualify for final authorization. Therefore, we are taking direct final action to authorize the State’s changes. In the “Proposed Rules” section of this issue of the *Federal Register*, the EPA is also publishing a separate document that serves as the proposal to authorize these revisions. Unless the EPA receives written comments that oppose this authorization during the comment period, the decision to authorize Vermont’s revisions to its hazardous waste program will take effect.

DATES: This final authorization will become effective on *[insert date 60 days after the date of publication in the Federal Register]*, unless the EPA receives adverse written comments by *[insert date 30 days after the date of publication in the Federal Register]*. If the EPA receives any such comment, the EPA will publish a timely withdrawal of this direct final rule in the *Federal Register* and inform the public that this authorization will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-RCRA-2022-0864, at <https://www.regulations.gov/>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information

whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Sharon Leitch, RCRA Waste Management, UST and Pesticides Section; Land, Chemicals and Redevelopment Division; EPA Region 1, 5 Post Office Square, Suite 100 (Mail code 07-1), Boston, MA 02109-3912; telephone number: (617) 918-1647; e-mail address: leitch.sharon@epa.gov.

SUPPLEMENTARY INFORMATION:

A. Why are revisions to State programs necessary?

States that have received final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, states must change their programs and ask the EPA to authorize the changes. Changes to state programs may be necessary when Federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

New Federal requirements and prohibitions imposed by Federal regulations that the EPA promulgates pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) take effect in authorized states at the same time that they take effect in unauthorized states. Thus, the EPA will implement those requirements and prohibitions in Vermont, including the issuance of

new permits implementing those requirements, until Vermont is granted authorization to do so.

B. What decisions has the EPA made in this rule?

November 29, 2022, Vermont submitted a complete program revision application seeking authorization of revisions to its hazardous waste program. The EPA concludes that Vermont's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA, as set forth in RCRA Section 3006(b), 42 U.S.C 6926(b), and 40 CFR part 271. Therefore, the EPA grants final authorization to Vermont to operate its hazardous waste program with the revisions described in its authorization application, and as listed below in Section G of this document.

The Vermont Department of Environmental Conservation (VTDEC) has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its application, subject to the limitations of HSWA, as discussed above.

C. What is the effect of this authorization decision?

This decision serves to authorize Vermont for the revisions to its authorized hazardous waste program described in its authorization application. These changes will become part of the authorized State hazardous waste program and will therefore be Federally enforceable. Vermont will continue to have primary enforcement authority and responsibility for its State hazardous waste program. The EPA would maintain its authorities under RCRA sections 3007, 3008, 3013, and 7003, including its authority to:

- Conduct inspections, and require monitoring, tests, analyses and reports;
- Enforce RCRA requirements, including authorized State program requirements, and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action will not impose additional requirements on the regulated community because the regulations for which the EPA is authorizing Vermont are already effective under state law

and are not changed by this action.

D. Why wasn't there a proposed rule before this rule?

Along with this direct final rule, the EPA is publishing a separate document in the "Proposed Rules" section of this issue of the *Federal Register* that serves as the proposal to authorize Vermont's program revisions. The EPA did not publish a proposal before this rule because the EPA views this as a routine program change and does not expect comments that oppose this approval. The EPA is providing an opportunity for public comment now, as described in Section E of this document.

E. What happens if the EPA receives comments that oppose this action?

If the EPA receives comments that oppose this authorization, the EPA will withdraw this direct final rule by publishing a document in the *Federal Register* before the rule becomes effective. The EPA will base any further decision on the authorization of Vermont's program revisions on the proposal mentioned in the previous section, after considering all comments received during the comment period. The EPA will then address all such comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If the EPA receives comments that oppose only the authorization of a particular revision to Vermont's hazardous waste program, the EPA will withdraw that part of this rule, but the authorization of the program revisions that the comments do not oppose will become effective on the date specified above. The *Federal Register* withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What has Vermont previously been authorized for?

The State of Vermont initially received Final authorization on January 7, 1985, with an effective date of January 21, 1985 (50 FR 775) to implement the RCRA hazardous waste management program. The EPA granted authorization for revisions to Vermont's regulatory program on the following dates: May 3, 1993 (58 FR 26242), effective August 6, 1993 (58 FR

31911); September 24, 1999 (64 FR 51702), effective November 23, 1999; October 26, 2000, effective December 26, 2000 (65 FR 64164); June 23, 2005 (70 FR 36350), effective on August 22, 2005; March 16, 2007 (72 FR 12568), effective May 15, 2007; December 31, 2013 (78 FR 79615), effective March 3, 2014; and April 20, 2015 (80 FR 21650), effective June 19, 2015.

G. What revisions is the EPA proposing with this proposed action?

On November 29, 2022, Vermont submitted a final complete program revision application, seeking authorization of additional revisions to its program in accordance with 40 CFR 271.21. Vermont seeks authority to administer the Federal requirements that are listed in Table 1 below. This table lists Vermont’s analogous requirements that are being recognized as no less stringent than the analogous Federal requirements.

Vermont’s regulatory references are to chapter 7 of the Vermont Environmental Protection Rules, the Vermont Hazardous Waste Management Regulations (VHWMR), Sub-chapters 1-10, as amended effective February 1, 2022. Vermont’s statutory authority to operate its hazardous waste program is found at 10 V.S.A. section 6603(9).

The EPA proposes to determine, subject to public review and comment, that Vermont’s hazardous waste program revisions are equivalent to, consistent with, and no less stringent than the Federal program, and therefore satisfy all of the requirements necessary to qualify for final authorization. Therefore, the EPA is proposing to authorize Vermont for the following program revisions:

Table 1. Vermont’s Analogs to the Federal Requirements

Federal Requirement	Federal Register Page and Date	Analogous State Authority
Checklist (CL) 228: Hazardous Waste Technical Corrections and Clarifications	77 FR 22229; April 13, 2012	Appendix I and 7-607

Federal Requirement	Federal Register Page and Date	Analogous State Authority
CL 229: Conditional Exclusions for Solvent Contaminated Wipes	78 FR 46448; July 31, 2013	<p>7-103 and 7-203(w)</p> <p>More stringent provisions: 7-203(w)(5) and 7-203(w)(7)(C)</p> <p>Partially broader in scope provision: 7-103, the definition of contaminated wipe includes wipes contaminated with state-only VT02 wastes.</p>
CL 232: Revisions to the Export Provisions of the Cathode Ray Tube (CRT) Rule	79 FR 36220; June 26, 2014	7-103; 7-912(k)(2).
CL 236: Imports and Exports of Hazardous Waste	81 FR 85696; November 28, 2016, as amended August 29, 2017 (82 FR 41015) and August 6, 2018 (83 FR 38263).	<p>7-103; 7-109(b)(5); 7-203(i)(1); 7-203(i)(4); 7-203(i)(5); 7-204(f)(3); 7-204(f)(4); 7-204(g)(1); 7-219(d); 7-301(g); 7-304(c); 7-402; 7-504(e)(1); 7-510(c)(1); 7-604(d); 7-703(b); 7-703(e); 7-703(h); 7-703(i); 7-703(j); 7-704(e); 7-704(g); 7-708(a)(3); 7-912(k)(1); 7-912(k)(2); 7-912(j)(2)(A); 7-912(j)(2)(B); 7-913(g); 7-914(c)(1); 7-915.</p>

Federal Requirement	Federal Register Page and Date	Analogous State Authority
CL 237: Hazardous Waste Generator Improvements Rule	81 FR 85732; November 28, 2016	<p>7-103; 7-106(a); 7-109(b)(2); 7-109(b)(4); 7-202(b); 7-202(c); 7-204(a)(1); 7-204(f); 7-214; 7-215; 7-219(d); 7-301(a); 7-301(b); 7-301(c); 7-301(g); 7-302(d); 7-302(e); 7-303; 7-304(a); 7-304(b); 7-304(c); 7-305; 7-306(a); 7-306(b); 7-306(c); 7-306(c)(1)(A); 7-306(c)(1)(D); 7-306(c)(2); 7-306(c)(2)(A) through (I); 7-306(d); 7-306(e); 7-307(a); 7-307(c); 7-307(c)(1); 7-307(c)(2); 7-307(c)(3); 7-307(c)(4); 7-307(c)(6); 7-307(c)(7); 7-307(c)(9); 7-307(c)(10); 7-307(c)(11); 7-307(c)(12); 7-307(c)(13); 7-307(e); 7-307(f); 7-308(a); 7-308(b); 7-308(c); 7-308(d); 7-309(a); 7-309(b)(1); 7-309(b)(2)(A); 7-309(b)(4); 7-309(b)(5); 7-309(b)(6); 7-309(b)(8); 7-310(a)(1); 7-310(a)(2); 7-310(b); 7-311(b)(1); 7-311(c); 7-311(f); 7-311(g); 7-311(h); 7-312(a); 7-312(b); 7-402(a); 7-402(b); 7-404(a)(5); 7-404(b); 7-502; 7-502(g); 7-502(l); 7-502(o); 7-504(e)(1); 7-504(e)(2); 7-504(e)(5); 7-510(c)(1); 7-605(a); 7-606(a); 7-702(b); 7-702(c); 7-708(a); 7-708(b); 7-708(c); 7-709; 7-901(b); 7-916(b)(2).</p> <p>More stringent provisions: 7-306(c), VT Very Small Quantity Generators (VSQGs) are subject to notification, container and tank management, and waste storage area design standards that are not required federally. In addition, VSQGs are limited to specified hazardous waste disposal options and are prohibited from disposing of hazardous waste in Vermont solid waste landfills; 7-306(b) a VSQG exceeding the limit for acute wastes or any other waste raises the VSQG into at least the Small Quantity Generator (SQG) category, VT did not adopt the conditions for an exemption found in 262.14(a)(3); No state analog to 262.16(c) for SQGs transporting waste over 200 miles; 7-308(b)(17)(B) Large Quantity Generators (LQGs) must submit a notification prior to commencing closure of a specific unit</p>

Federal Requirement	Federal Register Page and Date	Analogous State Authority
		(i.e. partial closure) or for closure of the entire facility; 7-308(b)(17)(C) an LQG may be required to submit a closure plan; 7-308(b)(17)(D) an LQG must follow specific requirements for closure; 7-308(b)(17)(E)(ii) certification of closure from an independent professional engineer may be required on a case-by-case basis; 7-308(b)(17)(F) if the generator was an LQG within five years prior to closure it must close as an LQG regardless of generator status at time of closure; 7-311(d)(2) SQGs and LQGs must maintain a log documenting weekly inspections of short-term storage areas.
CL 238: Confidentiality Determinations for Hazardous Waste Export and Import Documents	83 FR 60894; December 26, 2017.	7-109(b)(5); 7-912(k)(2)(A); 7-912(k)(2)(B).
CL240: Safe Management of Recalled Airbags	83 FR 61552; November 30, 2018.	7-103; 7-203(y); 7-306(c)(2)(G).
CL 241: Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine	84 FR 5816; February 22, 2019.	7-106(a) 7-203(b); 7-203(j)(4); 7-215(c); Appendix IV; 7-301(e); 7-301(f); 7-305(d)(10); 7-306(c)(2)(I)(i); 7-306(c)(2)(I)(ii); 7-502(l); 7-916(a)(1); 7-916(a)(4); 7-1001 through 7-1011.
CL 242: Universal Waste Regulations: Addition of Aerosol Cans	84 FR 67202; December 9, 2019	7-103; 7-106; 7-203(s); 7-502(j)(9); 7-901(a); 7-903(b)(2); 7-910; 7-911; 7-912(c)(3)(D); 7-912(d)(3)(C)(iii); 7-912(d)(3)(C)(iv); 7-912(d)(9); 7-912(e)(10).
CL 243: Modernizing Ignitable Liquids Determinations	85 FR 40594; July 7, 2020	7-205(a)(1); 7-205(a)(3); 7-205(a)(4); 7-205(a)(4)(A); 7-205(a)(4)(D); 7-219(d).
Special Consolidated Checklist for the Hazardous Waste Electronic Manifest Rules (Checklists 231 and 239)	79 FR 7518; February 7, 2014, and 83 FR 420; January 3, 2018.	7-103; 7-504(e)(1); 7-510(c)(1); 7-701(b); 7-701(c)(1); 7-701(c)(2); 7-702(a)(1); 7-702(a)(2); 7-703(a); 7-703(b); 7-703(c); 7-703(k)(1); 7-703(k)(2); 7-703(k)(3); 7-704(b); 7-704(c); 7-704(d).

EPA is also authorizing Vermont for the following universal waste rule provisions for postconsumer paint: 7-909; 7-911; 7-912(d)(8); and 7-912(e)(9). Since postconsumer paint is an appropriate universal waste and the rules allow the States the flexibility to add additional wastes

to their list of universal wastes, EPA is therefore reauthorizing the existing universal waste regulations as they are applied to the paint wastes. In addition, EPA is also authorizing Vermont for the other revisions to the universal waste regulations found at 7-911 and 7-912, relating to the definition of pesticide and storage container requirements, respectively.

EPA cannot delegate certain federal requirements associated with the federal manifest registry system, the electronic manifest system, and international shipments (*i.e.*, import and export provisions). Vermont has adopted these requirements and appropriately preserved the EPA's authority to implement them (see VHWMRs 7-103; 7-109(b)(5); 7-510(c)(1); 7-702(a)(2)(B); 7-703(b); 7-704(d)(5); and 7-915).

There are several Federal rules that have been vacated, withdrawn, or superseded. As a result, authorization of these rules may be moot. However, for purposes of completeness, these rule checklists are included here with an explanation as to the rule's status in Vermont. These checklists include: CL 216: Exclusion of Oil-Bearing Secondary Materials Processed in a Gasification System to Produce Synthetic Gas (73 FR 57, January 2, 2008); CL 221: Expansion of RCRA Comparable Fuel Exclusion (73 FR 77954, December 19, 2008); CL 224: Withdrawal of the Emission Comparable Fuel Exclusion (75 FR 33712, June 15, 2010); and CL 234: Vacatur of the Comparable Fuels Rule and the Gasification Rule (80 FR 18777, April 8, 2015) – CLs 216, 221, and 224 have been vacated. CL 234 implements the vacatur of these provisions. Vermont did not adopt the exclusions contained in CLs 216, 221, or 224; therefore, the adoption of CL 234 in Vermont would be inconsequential. Vermont's authorized program continues to be equivalent to and no less stringent than the Federal program without having to make any conforming changes pursuant to these rule checklists.

H. Where are the revised State rules different from the Federal rules?

When revised state rules differ from the Federal rules in the RCRA state authorization process, EPA determines whether the state rules are equivalent to, more stringent than, or broader in scope than the Federal program. Pursuant to RCRA section 3009, 42 U.S.C. 6929,

state programs may contain requirements that are more stringent than the Federal regulations. Such more stringent requirements can be federally authorized and, once authorized, become federally enforceable. Although the statute does not prevent states from adopting regulations that are broader in scope than the Federal program, states cannot receive federal authorization for such regulations, and they are not federally enforceable.

1. Vermont's requirements that are Broader in Scope

Vermont's hazardous waste program contains certain provisions that are broader than the scope of the Federal program. These broader in scope provisions are not part of the program the EPA is proposing to authorize. The EPA cannot enforce requirements that are broader in scope, although compliance with such provisions is required by State law. The Vermont provisions in this update that are broader in scope include, but are not limited to, the following: (a) 7-211 Vermont listed hazardous wastes - pesticidal wastes, identified by the Vermont hazardous waste code VT06; PFOA wastes, identified by the Vermont hazardous waste code VT21; and PFOS wastes, identified by the Vermont hazardous waste code VT22; (b) 7-304(e), 7-306(c)(1)(C), 7-307(c)(5), and 7-308(b)(5), the fee requirements for generators; and (c) 7-702(a)(4), the VT tax on hazardous waste shipments.

2. Vermont's requirements that are More Stringent than the Federal program

Vermont's hazardous waste program contains several provisions that are more stringent than the Federal RCRA program. More stringent provisions are part of a Federally authorized program and are, therefore, Federally enforceable. Under this action, the EPA would authorize every provision in Vermont's program that is more stringent. The provisions of the proposed program revision that are more stringent are noted in Table 1. They include, but are not limited to, the following:

(a) Vermont limits the exclusion for solvent contaminated wipes to the exclusion for only reusable wipes that are transported off-site for cleaning; it does not include the federal exclusion for disposable wipes and does not allow the on-site cleaning of the wipes. In addition, Vermont

also requires that generators maintain certain documentation at their site regarding the management of the wipes.

(b) Vermont regulates VSQGs more stringently by not allowing them to mix hazardous wastes with solid wastes. In addition, Vermont does not allow VSQGs to exceed quantity limits, whereas the federal regulations at 262.14(a)(3) and 262.14(a)(4) do allow this. In Vermont, VSQGs become at least an SQG if they exceed any of the quantity limits for VSQGs.

(c) Vermont has no state analog to 262.16(c) for SQGs transporting waste over 200 miles.

(d) Vermont does not have the “mixture” rule, therefore has no state analog to 262.13(f)(2) for SQG and LQG wastes mixed with solid wastes.

(e) SQGs and LQGs must maintain a log documenting weekly inspections of short-term storage areas, there is no federal analog to this requirement.

(f) LQGs are subject to closure requirements that are not required federally. LQGs must submit a “Pre-Closure Notification Form” and, based on the information provided on that form, may be required to submit a closure plan that meets specific requirements. Those requirements are found in VHWMR § 7-308(b)(17)(D). In addition, on a case-by-case basis, the certification of closure from an independent professional engineer may be required, and if the generator was an LQG within five years prior to closure it must close as an LQG regardless of generator status at time of closure.

I. Who handles permits after the authorization takes effect?

Vermont will continue to issue permits covering all the provisions for which it is authorized and will administer the permits it issues. EPA will implement and issue permits for any HSWA requirements for which Vermont is not yet authorized in the future.

J. What is codification and will the EPA codify Vermont hazardous waste program as authorized in this rule?

Codification is the process of placing citations and references to the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by adding those citations and references to the authorized State rules in 40 CFR part 272. EPA is not proposing to codify the authorization of Vermont's changes at this time. However, EPA reserves the ability to amend 40 CFR part 272, subpart UU for the authorization of Vermont's program at a later date.

K. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action authorizes State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB. This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as this authorization of Vermont's revised hazardous waste program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of

government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant, and it does not make decisions based on environmental health or safety risks. This action is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), the EPA grants a state’s application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in taking this action, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of this action in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). “Burden” is defined at 5 CFR 1320.3(b). Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their

mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this action authorizes pre-existing State rules which are at least equivalent to, and no less stringent than existing Federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, this rule is not subject to Executive Order 12898.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

February 23, 2023.

David W. Cash
Regional Administrator,
U.S. EPA Region I.

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